

REMARKS

This is intended as a full and complete response to the Final Office Action dated July 6, 2005.

Claims 1-26 remain in this application. Claims 10 and 14 have been previously amended.

Claim 18 is being currently amended.

Claims 23 and 24 are being canceled.

Claims 27 and 28 are new.

Claims 1, 2, 4, 5, 7, 8, 10, 12, 16-18, 20, 21, 23 and 25 were rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 5,537,954 to Beeghly et al. ('954).

Claims 1-5, 7, 16-18, 21, 23, 25 and 26 were rejected under 35 U.S.C. § 102(b) as anticipated by German Patent No. DE 20021260U1. (DE260).

Claims 6, 9, 11, 19, 22 and 24 were rejected under 35 U.S.C. § 103(a) for obviousness as being unpatentable over U.S. Patent No. 5,537,954 to Beeghly et al. ('954).

Claims 13-15 were rejected under 35 U.S.C. § 103(a) for obviousness as being unpatentable over U.S. Patent No. 5,537,954 to Beeghly et al. ('954) in view of Japanese Patent Number JP10113088 (JP088)

The period for response expires October 6, 2005. Accordingly, this response is being presented in a timely manner.

This response is being filed in accordance with recently revised 37 C.F.R. § 1.121, as set forth in 68 F.R. 38611 (June 30, 2003). If any amendment is considered to be not in compliance with recently revised 37 C.F.R. § 1.121, the Examiner is respectfully requested to contact the undersigned at his earliest possible convenience.

Reexamination of the application as amended, reconsideration of the rejections, and allowance of the claims remaining for consideration are respectfully requested.

#### AMENDMENTS TO THE APPLICATION

Entry of the amendments to the application is respectfully requested. As detailed below, they introduce no new matter.

The paragraph at page 1 lines 15 to 22 was amended to correct a word-processing error. Specifically, the word “horses” was replaced with the word “horse’s”.

The paragraph at page 3 lines 16 to 25 was amended to correct a word-processing error. Specifically, the word “that” was replaced with the word “the” the word “competitions” was replaced with the word “competition” and the words “thorough bread” was replaced with the word “thoroughbred”.

The paragraph at page 3 line 26 to page 4 line 3 was amended to correct a word-processing error. Specifically, the word “competitions” was replaced with the word “competition”.

The paragraph at page 4 lines 10 to 16 was amended to correct a word-processing error. Specifically, the word “hp” was replaced with the word “hip” and the word “a” was deleted.

The paragraph at page 4 lines 17 to 24 was amended to correct a word-processing error. Specifically, the word “that” was replaced with the word “than”.

Claim 18 was amended to emphasize the strategically located cavities of the current invention. Support for this amendment is found throughout the specification, for example at page 4 line 26 to page 5 line 5 wherein it is described that the cavities can be at a variety of locations on the cover. No new matter has been added by this amendment.

Claims 27 and 28 are being added by this amendment to emphasize one embodiment of the current invention wherein the animal cover is used on a horse. The elements of this embodiment are supported throughout the specification in the discussions of the horse cover having strategically located cavities for delivering targeted temperature altering regimens. Accordingly, no new matter has been added by this amendment.

Accordingly, entry of the amendments is respectfully requested.

#### SUMMARY OF THE OFFICE ACTION

In the Office Action, the Examining Attorney rejected claims 1-26 of the present application under 35 U.S.C. §§ 102 and 103. The claims of the Application have been amended above. These amendments to the claims should obviate some of the Examiner's rejections. To the extent that these amendments do not address Examiner's rejections, Applicant respectfully traverses these rejections for the reasons set forth below. In light of the amendments clarifying the invention and the arguments traversing these rejections, Applicant respectfully requests that the Examiner reconsider and withdraw the rejections and allow the application to issue.

#### CLAIM REJECTIONS UNDER 35 U.S.C. § 102

##### Beeghly et al., United States Patent Number 5,537,954 (Beeghly)

Claims 1, 2, 4, 5, 7, 8, 10, 12, 16-18, 20, 21, 23 and 25 are presently rejected under § 102(b) as being anticipated by Beeghly et al., United States Patent Number 5,537,954 (Beeghly). The Examiner supports the rejection by stating: that the pockets of Beeghly are strategically located on the dog sweater; that the location of those pockets does not need to be mentioned by the Beeghly specification because one can

“realize that the pockets are placed on the side, the girth, etc. of the animal”; and that Beeghly uses a heat pad or cool pack. For the reasons set forth below, this rejection is traversed and the Examiner is respectfully asked to reconsider and withdraw this holding.

To anticipate a claim under 35 U.S.C. § 102, a single source must contain all of the elements of that claim. *Atlas Powder Co. v. E.I. du Pont de Nemours & Co.*, 750 F.2d 1569, 1574, 224 U.S.P.Q. 409, 411 (Fed. Cir. 1984); *In re Marshall*, 578 F.2d 301, 304, 198 U.S.P.Q. 344, 346 (C.C.P.A. 1978). Moreover, anticipation under 35 U.S.C. § 102 requires that the single source must disclose all of the claimed elements “arranged as in the claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 U.S.P.Q. 2d 1913, 1920 (Fed. Cir. 1989). The anticipatory reference must also “sufficiently describe the claimed invention to have placed the public in possession of it.” *Minnesota Mining & Manufacturing Co. v. Johnson & Johnson Orthopaedics, Inc.*, 976 F.2d 1559, 1572, 24 U.S.P.Q. 2d 1321, 1332 (Fed. Cir. 1992). As the Federal Circuit has held, to constitute an anticipatory reference, the prior art must possess an enabling disclosure. *Scipps Clinic & Research Foundation v. Genentech, Inc.*, 927 F.2d 1565, 1578, 18 U.S.P.Q. 2d 1001, 1011 (Fed. Cir. 1991).

Regarding the strategic location of the Beeghly pockets, Examiner has stated that the cavities on the Beeghly reference are not everywhere, they are specifically at certain locations on the body, and as such are strategically located. Examiner further states that there is no need to mention where on the animal’s body these pockets are located because by looking at the reference one can readily realize these locations as being the “girth, abdomen and etc.”

That the Beeghly pockets are shown at a location on the blanket does not mean that Beeghly’s placement of the pockets at that location was strategic rather than convenient, obvious or even random. According to Merriam-Webster Online, the term “Strategic” is defined as being marked by a strategy and “Strategy” is defined as a careful plan or method. Similarly, Dictionary.com defines a “Strategy” as an elaborate and systematic plan of action intended to accomplish a specific goal. So, if the Beeghly pockets are in fact strategically placed, then the questions become: (1) what is the goal of

Beeghly; and (2) what is Beeghly's plan for reaching that goal. To be anticipatory, the goal and plan elements for the strategically located pockets will have to be the same as those of the current application. (See *Atlas Powder Co.*,)

(1) Beeghly's Goal:

The goal of Beeghly is to provide warmth to an animal's body and that goal is achieved by providing a heated pet sweater having pockets. To be sure, Beeghly states the following at column 2, lines 10-14: "...the heated pet sweater according to the present invention...primarily developed for the purpose of providing heat and maintaining warmth of an animal." Beeghly also states that the object of the invention is to provide an improved heated pet sweater: (A) not requiring an electrical power source; (B) is easily and efficiently manufactured and marketed; (C) is of a durable and reliable construction; (D) is susceptible to low cost manufacture, low price sale and so is economically available to the public; (E) is thermally insulative and thereby aids in maintaining the body heat of the animal wearer; (F) has a chemically reactive heating source; and (G) has a passive heating source. (column 3 line 47 to column 4 line 19). In the detailed description, Beeghly states that "...the heated pet sweater 10 is adapted for use with an animal such as a cat or dog to maintain body heat and provide additional heat therein." (column 5 lines 7-10). According to the Beeghly reference, then, the goal of the invention is to provide warmth to an animal wearing the sweater by using a durable and low cost heated pet sweater. Providing warmth is typically applied uniformly to the entire body. There is certainly no indication that Beeghly desires to target any specific area of the animal's body to treat swelling, aching, inflammation or soreness.

(2) Beeghly's Plan:

Beeghly's goal is obtained by providing a pet sweater having a plurality of pockets disposed thereon. (column 5 lines 10-16). So, the plan for achieving the goal of keeping a pet warm is to provide a pet sweater that has pockets, which contain either a chemical or a passive heat source. The location of the pockets is not discussed in the specification, as acknowledged by Examiner, but they do have a location shown in the drawings. However, Beeghly's reasons or strategy for selecting any location is not

discussed, nor can it be deduced from Beeghly's description. Merely wanting to provide warmth to a pet wearing a sweater allows the placement to be anywhere on the sweater, an assertion that is not contradicted by Beeghly. Moreover, it is not clear what precise anatomy is contacted by the Beeghly pockets, because again, there is no discussion in the specification. Viewing figure 1, which is the only figure showing the pet sweater on the dog, it is still not clear what anatomy the pockets are contacting. Is it the back, the loin, the croup, the spine, the spinal muscles, the scapula, the withers, the hips, the shoulder, the brisket? Is it directed at the muscles or the joints or at any organs or to the thoracic cavity in general? These questions of anatomy are unanswered and unaddressed by the Beeghly specification. Examiner is stating that the pockets are contacting the side, the girth and etc. of the dog. These terms are not provided in the description, nor in the figures. Moreover, it is unclear to the Applicant what anatomy is referred to by "etc".

(3) Beeghly's Pockets Conclusion:

The Examiner has stated that the pockets of Beeghly are strategically located, yet Examiner has not recited the goal nor the plan for reaching that goal in the Beeghly reference. Examiner has merely stated that the reference implies the strategy. Applicant disagrees with Examiner that Beeghly's placement of the pockets was strategic, rather than convenient or random.

Nonetheless, assuming that there was a strategy, then there is necessarily a goal and a plan for accomplishing that goal. In Beeghly the goal is to warm a pet and the plan for accomplishing that goal is to provide a sweater with heating elements in a pocket. Those pockets can be located anywhere, and their precise placement with respect to the anatomy of the dog user is neither stated by Beeghly, nor deducible from the figure 1.

(4) Strategically Located Pockets of the Current Invention:

a. Goal:

The current application; however, states that the present invention relates to a device that is useful for delivering a temperature altering regimen to a specific and defined location of an animal's body. The specification of the current invention also states that it is desirable to deliver a temperature altering regimen for a variety of reasons, including: treating swelling and aching following a strenuous workout and assisting with the pain associated with swelling due to arthritis. (page 2, lines 3-5). The current application also states that competition animals will develop sore muscles and inflamed joints. (page 3 lines 21-22). So, the goal of the current application is to treat swelling, aching, pain and inflammation on an animal, and not merely to provide protection against the elements, although that purpose is possible.

b. Plan:

The specification of the current application states that there is a need in the art for an animal cover that delivers targeted and extreme temperatures to an animal's body. (page 1 lines 20-22). The summary of the invention states that the present invention is a device that delivers temperature to a specific and defined location on the animal's body using strategically located cavities comprising temperature altering devices. (page 1, lines 25-26 and page 2 lines 9-14). The detailed description states that the invention delivers a temperature directly to a specific location on the horse's body. (page 3 line 29 to page 4 line 1). The specification discusses one embodiment of the strategically located cavities as being strategically located to touch the horse's spine, spinal muscles, shoulder muscles, hip muscles, stifle joint and cervical-spine. (page 4 line 27 to page 5 line 4). The cavities can sit on the horse blanket so that they are easily positioned and repositioned in a variety of locations. (page 5 lines 24-26). The cavities can be oversized with a clamp to position and reposition a temperature altering device in a variety of locations (page 6 lines 19-21). A temperature altering regimen is delivered to strategic locations on the horse's body. (page 9 lines 24-25).

So, applicant's plan for achieving the goal of treating sore muscles, swelling, aching and inflamed joints is to provide a horse blanket that comprises cavities

that are strategically located to contact the afflicted anatomy. This is far different than the goal and plan of Beeghly.

c. Current Invention Conclusion:

The current application describes strategically located pockets on an animal cover. The strategy is a goal of delivering a temperature altering regimen to a specific and defined location of the animal's body. These parts of the body, when the animal is a competition horse, are those afflicted with sore muscles, inflamed joints, swelling and aching. The specification also describes a plan for treating these ailments wherein a temperature altering regimen is delivered directly to these specific locations on the horse's body. As an example, the specification discusses some of the anatomical locations that can be contacted with a temperature altering device. This description of a strategy is very much unlike anything that one can attempt to deduce from the Beeghly reference.

(5) Conclusion Strategically Located Pockets:

Beeghly has failed to teach the strategic positioning of the pockets to contact a specific anatomy. Beeghly goal is to provide warmth to the animal and does not teach Applicant's goal of reducing inflammation, soreness, or other ailments of any specific anatomy. Neither can the Beeghly reference enable such a teaching because Beeghly fails to mention any condition (other than being cold), Beeghly fails to mention any anatomy, and Beeghly fails to mention any placement of a temperature altering device at such anatomy. (See, *Richardson; Minnesota Mining & Manufacturing Co.*; and *Scripps*). Examiner has not shown any teaching by Beeghly regarding how a temperature altering device can be adjustably placed at a desired position on the pet sweater because Beeghly teaches a pocket sewn on the pet sweater.

Figure 1 of Beeghly does not remedy these deficiencies, nor does it alter the goal of Beeghly such that Beeghly's goal changes from warming up a pet to delivering a temperature directly to a specific location on a horse's body. That being said, Beeghly does not teach the strategic location of cavities, and most certainly does not



teach the strategic location of cavities to defined areas of an animal's body to assist with inflammation, soreness and other anatomy specific conditions.

Moreover, Beeghly does not teach or enable a temperature altering device in the strategically located cavity having a sealable pocket of the strategically located cavity; the removal and replacement of a temperature altering device with respect to the strategically located cavity; the material of the strategically located cavity; the use of the strategically located cavity on any specific animal; the method of altering the temperature device; or of adjusting the cover allowing the temperature altering device to work or be used on any animal that use the strategically located cavities of the current invention because Beeghly is not teaching or enabling the strategically located cavity of these claims.

Beeghly fails to teach and enable every element of the strategically located cavities of the current invention, and as such, cannot teach the invention of independent claims 1 and 18 (as currently amended), nor can it teach the invention of the dependent claims 2, 4, 5, 7, 8, 10, 12, 16, 17, 20, 21, 23 or 25. As such, Applicant respectfully requests to the Examiner that the rejection based on Beeghly be withdrawn and that the claims are allowed.

Uhr, German Patent Document DE20021260U1 (Uhr)

Claims 1-5, 7, 16-18, 21, 23, 25 and 26 are presently rejected under 35 USC § 102(b) as being anticipated by Uhr, German Patent Document DE20021260U1 (Uhr). Examiner, references the abstract and figures of this patent to support the opinion that Uhr teaches the strategically located pockets of the current invention and the method for its use as claimed in the current invention. For the reasons set forth below, this rejection is traversed and the Examiner is respectfully requested to reconsider and withdraw this rejection.

(1) The Strategy of Uhr:

As discussed above, determining whether a cavity is strategically placed requires that the reference discuss the goal and the plan for achieving that goal with respect to placement of the cavity. In the abstract, Uhr states that the use of the invention is to protect the animal from the cold. This goal is that same as the goal of Beeghly; i.e., providing warmth to the animal wearing the blanket. Also like Beeghly, Uhr's goal is not the same as that of Applicant's current invention: targeting specific body parts of the animal wearer to deliver a temperature altering regimen to a specific and defined location of an animal's body to treat soreness, swelling, aching and inflammation in the joints and muscles. The goal of Uhr does not teach the goal of the current invention.

Uhr's plan for protecting a horse from the cold is to provide a horse blanket that can warm or cool specific body areas, e.g., particularly sensitive areas. Turning to the figures to determine what areas are considered particularly sensitive to the cold, Uhr is apparently warming an area that may include the horse's back and shoulder, but, only to counter uncomfortable weather. This is not Applicant's plan for targeting specific joints and muscles to treat soreness, swelling, aching and inflammation. Uhr's plan for warming a horse is not the same as Applicant's plan for targeting sore, swollen, aching and inflamed joints and muscles.

Moreover, Uhr does not teach or enable a temperature altering device in the strategically located cavity, the removal and replacement of a temperature altering device with respect to the strategically located cavity, a method of altering the temperature device, of adjusting the cover allowing the temperature altering device to work or the use on any animal of a cover that use the strategically located cavities of the current invention.

Finally, the Examiner has stated that Applicant's claims do not address precisely targeting a specific anatomy with a temperature altering regimen. Applicant respectfully directs the Examiner to the language of Applicant's specification wherein the following phrases are used to describe the strategic location of the cavities: specific and defined location on an animal's body (page 1, lines 26-27); provide temperature to a muscle group or joint (page 2 line 3); strategically located cavities therefore placing the

temperature altering device in a specific and defined location (page 2 lines 11-14); deliver temperature directly to a specific location on a horse's body (page 3 lines 29-30); the discussion on page 4 to page 5 illustrating the targeting of specific muscles and joints (page 4 line 25 to page 5 line 13); delivery of a temperature altering regimen to the stifle joint, inner thigh, groin of a horse (page 5 line 29 to page 6 line 2); positional cavity not limited to flap (page 6 lines 24-26); temperature altering device is brought to a temperature and is strategically placed on horse to deliver temperature altering regimen to a specific area (page 7 lines 23-25); a temperature altering regimen is delivered to strategic locations on a horse's body (page 9 lines 24-25) as well as claims 1, which states that the cavities are strategically located to deliver a temperature altering regimen to a targeted area of the animal's body; and claims 2-4, which are dependent on 1 and which name targeted areas for receiving the temperature altering regimen from the strategically located pockets. Applicant's goals are reflected in Applicant's claims and specification. Applicant's claims do address targeting specific anatomy with a temperature altering regimen. Applicant's arguments therefore are not moot and should be considered by the Examiner.

Uhr's goal and plan for achieving that goal are not the same as Applicant's goal and plan, thus Uhr's strategically located pockets do not teach or enable all of the elements of Applicant's strategically located cavities. As such, Uhr is not anticipating Applicant's animal cover or method of use and claimed in independent claims 1 and 18, nor of the dependent claims 2, 3, 4, 5, 7, 16, 17, 21, 23, 25 or 26. As such, Applicant respectfully request to the Examiner that the rejection based on Uhr be withdrawn and that the claims are allowed.

CLAIM REJECTIONS UNDER 35 U.S.C. § 103

Beeghly et al., United States Patent Number 5,537,954 (Beeghly) alone

Claims 6, 9, 11, 19, 22 and 24 are rejected as being obvious and unpatentable over Beeghly et al., United States Patent Number 5,537,954 (Beeghly) alone. As applied to the claims, the rejection is respectfully traversed.

Examiner has stated that Beeghly alone makes it obvious to permanently locate a temperature altering device within a pocket or cavity and then strategically locate that cavity at a specific and defined location on an animal to treat swelling, soreness, aching or inflammation of muscles or joints at that location – obviating claims 6, 9, 11 – and to place the cover in a temperature altering environment, contact the cover at a stifle joint and repeating the temperature altering step – obviating claims 19, 22 and 24. Examiner states that the motivation to make these changes to the Beeghly invention is “the user’s preference to do so.”

Regarding Examiner’s support of these obviousness rejections being that the motivation to alter Beeghly is derived from the user’s desire to alter the Beeghly device; Applicant submits that such is not adequate support for an obviousness rejection. (See, e.g., *In re Kotzab*, 217 F.3d 1365 (2000)). Moreover, providing warmth to a pet is a different problem to solve than is providing a temperature altering regimen to muscles and/or joints that are suffering from swelling, aching, soreness or inflammation. Because the nature of the problems addressed by these inventions is different, each invention described is necessarily different.

One element that is common to all of these rejected claims is the strategically located cavities of the Applicant’s animal cover that are capable of delivering a temperature to a specific and defined location of the animal’s body. That element is not met by Beeghly in these claims. The absence of any of the elements of the claimed invention from the teachings of the prior art is fatal to the existence of a *prima facie* case of obviousness. *In re Fine*, 5 U.S.P.Q. 2d 1596 (Fed. Cir. 1988). Without that element, any teaching of Beeghly fails as a reference for building a *prima facie* case of obviousness. Thus, with respect to the Examiner’s rejections of claims 6, 9, 11, 19, 22 and 24, each rejection lacks the element of having a strategically located cavity as described. Moreover, there is no suggestion, motivation nor teaching in Beeghly to

modify Beeghly to create the current invention. As such, Beeghly does not make claims 6, 9, 11, 19, 22 and 24 obvious.

Examiner is falling victim to the insidious effect of using improper hindsight by using the Applicant's current invention as a teaching against him. (*In re Fine*). Hindsight is only proper when it does not include any teaching gleaned from the Applicant's disclosure. (*In re McLaughlin*, 433 F.2d 1392 (1971)). Teaching regarding the configuration of the pockets, the methods for heating the pockets and the application of a pocket to the stifle are found only in Applicant's disclosure. Thus, the Examiner has used improper hindsight to glean Applicant's teachings and in turn use them against Applicant. Applicant respectfully requests that the Examiner reconsider and withdraw the obviousness rejection on claims 6, 9, 11, 19, 22 and 24.

Beeghly et al., United States Patent Number 5,537,954 (Beeghly) combined with Tadauchi, et al., Japanese Patent Number JP 10113088 A (JP088)

Claims 13-15 are rejected as being obvious and unpatentable over Beeghly et al., United States Patent Number 5,537,954 (Beeghly) combined with Tadauchi, et al., Japanese Patent Number JP 10113088 A (JP088). As applied to the claims, the rejection is respectfully traversed.

Examiner is supporting his holding of obviousness by stating that one ordinarily skilled in the art will use the VELCRO taught in the JP088 disclosure on the pockets of the Beeghly reference to move the pockets to a different area of the blanket. Examiner concludes based thereon that Applicant's claim 13 is obvious. The JP088 reference is directed towards cooling the head of a horse. Beeghly is directed towards warming the body of a dog. Neither has a principle operation that is directed towards targeting specific joints and muscles to treat swelling, inflammation, soreness or aching. Only the Applicant is teaching the targeted delivery of a temperature altering regimen to specific muscles or joints that are affected by swelling, inflammation, soreness or aching.

Thus, the Examiner has used improper hindsight to glean Applicant's teachings and in turn use them against Applicant.

Examiner's rejection of claims 14 and 15 are also improperly based on hindsight. Neither JP088 nor Beeghly make any reference to the stifle joint or to that joint as being one that can be directly or specifically targeted by a temperature altering device. And for sure, the configurations disclosed by Applicant in the embodiments of this flap for delivering the cavity and temperature altering device to the stifle are not disclosed in JP088 or Beeghly. These are the teachings of Applicant, and cannot be used as the basis of an obviousness rejection against Applicant's claims. (*In re Fine*; and *In re McLaughlin*).

Finally, Examiner is supporting the rejection of claims 13-15, by referencing the figures and abstract of JP088 where it says "plural cooling materials 2 freely attachably and detachably attached to the required parts". Looking at the figures 1, 2 and 3 of the JP088 reference there is shown a head harness of the current invention having the cooling materials 2 on the left side/forehead region of the harness, a hole for the horse's ear and the harness extending to the "upper part of the back of the neck" of the horse. In figure 3 there is shown the cooling material attached to the "vinyl leather" of the harness using two small patches of hook and loop. JP088 is teaching that the cooling material can be attached and removed from a defined spot at the forehead of the horse. The remaining material used for the horse head harness is vinyl leather, which is not complementary to hook or loop. Examiner has not pointed to any teaching in JP088 regarding how one would go about attaching the hook or loop member of the cooling member to the vinyl leather surface of the head harness. The attachment and detachment of the JP088 cooling material is limited to a single location of the harness, i.e., where the small strips of hook and loop are located. This is not the adjustability disclosed and claimed by Applicant.

As is stated above, the goal of the current invention is to provide a temperature altering regimen to a specific location of an animal's body. That location is disclosed as being any variety of joints and muscles, and the invention delivers a

temperature altering regimen to those locations using strategically located pockets having temperature altering devices. The cavities are described as being easily positioned and repositioned to a variety of locations on the cover (page 5 lines 24-26). As an example of how this positioning and repositioning takes place, Applicant has described a cavity that is placed in or on the cover, specifically the flap (page 5 line 29 to page 6 line 1). Repositioning of the cavity takes place in one example by sliding the along the flap. In another example the cavity covers a large region and the temperature altering device is movable within the large cavity and then secured into a position with a clamping mechanism that closes the additional space, leaving the cavity and temperature altering device at a selected position. (page 6 lines 3-26).

Applicant's adjustable positioning is not taught by the JP088 reference having only two small patches of hook or loop on a vinyl leather horse head harness. In fact, the JP088 reference teaches away from this adjustability because there is no other place for the cooling material to attach except for the small patch of hook or loop because the remaining vinyl leather material is not complementary to a hook and loop system. Adjusting the cooling material to a location other than the small patch of hook or loop provided will not be successful because the remaining head harness material will not attach with the cooling material's hook or loop member. The modification suggested by Examiner would make the JP088 invention unsatisfactory for its intended purpose.

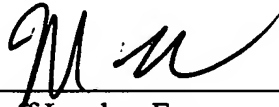
*A prima facie* case of obviousness requires a motivation to combine the references, a reasonable expectation of success and a teaching or suggestion of all of the elements of the claims. (See, e.g., *In re Fine*; *In re Skinner*, 2 USPQ2d 1788, 1790 (1986); *Amgen Inc. v. Chugai Pharm. Co.*, F.2d 1200, 1209 (1991); and *In re Wilson*, 424 F.2d 1382, 1385 (1970)). The teaching or suggestion, as well as the expectation of success, must come from the prior art, not applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 493 (1991). There is no *prima facie* case of obviousness. Furthermore, Examiner is using improper hindsight to attribute Applicant's teachings to these prior art reference in supporting this obviousness rejection. As such, the obviousness rejection cannot stand. Applicant respectfully requests that the Examiner withdraw the rejections of claims 13-15.

**CONCLUSION**

Applicant respectfully submits that claims 1- 28 are in condition for allowance, and earnestly solicits a notice to such effect. Should any issues or questions remain, the Examiner is encouraged to telephone the undersigned at 858-200-0582 so that they may be promptly resolved without the need for an additional formal action and response thereto.

Date: Sept. 30, 2005

Respectfully submitted,

  
\_\_\_\_\_  
Jeff Landes, Esq.  
Reg. No. 55,355

CATALYST LAW GROUP, APC  
9710 Scranton Rd.  
Suite 170  
San Diego, CA 92121  
858-200-0582 (phone)  
858-450-9834 (fax)